Public Submission regarding Senate Bill 776 to amend the Michigan Election Law with immediate effect

Michigan House of Representatives
Elections Committee
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INTRODUCTION

Good morning to the Committee members and Chairwoman. Thank you for this opportunity. My name is David Schonberger. I live in Michigan House District 53, and I am submitting this testimony as an individual member of the public.

DISCUSSION

I oppose SB 776. Likewise, hundreds of thousands of registered voters throughout the state share my concern, as evidenced by their signatures on active petitions. Therefore, due to widespread interest, I call on the Committee Chair to schedule a thorough *public hearing* on this matter, to be held in a larger meeting room and at a time and place more inviting and accessible to constituents. I respectfully contend that a regular committee meeting is insufficient and will likely result in the passage of an unconstitutional and counterproductive bill.

The remainder of my comments focus on two areas of concern:

- The adverse economic and fiscal impact of giving the bill "immediate effect" if enacted;
- The flawed Legislative Analysis and Fiscal Impact Analysis of the House Fiscal Agency.

First, I respectfully contend that the "immediate effect" instruction passed by the Senate is fiscally counterproductive and unfriendly to business. Quite simply, such action would make current and future laws of the State of Michigan unbankable. SB 776 would introduce an unwarranted element of risk and uncertainty to commercial transactions and therefore would disrupt and complicate contractual negotiations,

stifling ordinary economic activity conducted in accordance with Michigan's rules governing free enterprise.

For our democratic system to function without degenerating into chaos, citizens must be able to have full faith and trust in the integrity and consistency of the law. If a citizen initiates a process under the State Constitution and proceeds to raise working capital in order to implement and fully comply with the terms of economic engagement, the citizen must be able to have confidence that the fundamental rules of commerce will not be meddled with in the middle of the process in such a way as to invalidate and effectively confiscate the citizen's investment. Such real damage caused by the state government would constitute a tangible injury to the citizen and would present the appearance of underhanded thievery by an institution which derives its authority from the people. In that sense, I argue that SB 776 inadvertently undermines the credibility of the state as an attractive place to do business.

Second, I respectfully contend that the Analyses conducted by the non-partisan House Fiscal Agency staff in regards to SB 776 are severely flawed, and therefore, I urge House members to ignore the Agency's bogus report during deliberations. The Fiscal Impact Analysis is fundamentally incorrect, as I have argued above. Likewise, the Legislative Analysis is misinformative, historically inaccurate and dangerously misleading.

Throughout, the House Fiscal Agency's Legislative Analysis mistakenly treats Constitutional Amendment petitions and Legislative Initiative petitions in the same way, as if the rules which apply to one apply to both. The first indication of the Agency's confusion is the reference to the requisite number of signatures for a petition. As a matter of fact, the

State Constitution establishes a lower threshold to invoke a Legislative Initiative than for a petition to amend the Constitution.

Similarly, the Agency's Legislative Analysis confuses the distinctly independent constitutional and legal histories of the Constitutional Amendment petition and Legislative Initiative petition, going all the way back to their different dates of incorporation into the State Constitution. The Agency's analysis only provides a footnoted reference to Article 12, Section 2 of the Constitution, which describes the process for amending the Constitution by petition. Inexplicably absent is any footnoted reference to Article 2, Section 9 of the Constitution, which contains a self-executing provision for initiating legislation by petition.

This significant omission is then compounded by the Agency's unfortunate mischaracterization of a 1986 Michigan Supreme Court ruling. The House Fiscal Agency's guidance report would have you believe, incorrectly, that the Supreme Court upheld the constitutionality of the 180-day rule enacted in 1973 with respect to both Article 12 petitions and Article 2 petitions. However, I contend that the Supreme Court's ruling only applies to Article 12 petitions and not to Article 2 petitions. In other words, the Supreme Court left intact the State Attorney General's 1974 opinion with respect to Legislative Initiative petitions under Article 2.

As a result, the 1973 law creating the 180-day rule and rebuttable presumption and the 1986 policy implementing the 1973 law are unconstitutional infringements on a self-executing Article 2 process. It is settled law that the Legislature is prohibited from imposing additional obligations on a self-executing constitutional provision and must

therefore implement such a directive without imposing additional limitations on the power reserved by the people to themselves.

Moreover, in a bit of déjà vu, the signature rehabilitation policy established thirty years ago in 1986 by the Board of State Canvassers is reminiscent of the 1941 election statute overruled by the Michigan Supreme Court after thirty years in 1971. (*Wolverine Golf Club*). The 1941 statute was unconstitutional because it imposed a burdensome restriction on the people's reserved right of initiative under Article 2. Thus, a thirty-year-old practice is not inherently constitutional.

CONCLUSION

For the above reasons, the Michigan House Elections Committee should conduct a thorough public hearing before voting on Senate Bill 776 and should reject the Senate's imprudent and unconstitutional overreach.